

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

SHANELL K. DUNCAN,

Plaintiff,

v.

ALVIN R. ALLEN, et al.,

Defendants.

CASE NO. 3:23-CV-5285-MJP-DWC

ORDER DIRECTING SERVICE OF  
CIVIL RIGHTS COMPLAINT ON  
DEFENDANTS MARTIN AND  
RAIDER

This is a civil rights action brought pursuant to 42 U.S.C. § 1983. Plaintiff is proceeding with this action *pro se* and *in forma pauperis*. On September 19, 2023, the Court granted Plaintiff leave to file an amended complaint. Dkt. 29. On September 26, 2023, Plaintiff filed the Amended Complaint. Dkt. 30. In the Amended Complaint, Plaintiff names Maria Martin and Maria Raider as defendants. *Id.* Defendants Martin and Raider were not served with the Amended Complaint and counsel has not entered an appearance on their behalf. *See* Docket; *also* Dkt. 35-1 (defendants did not file the motion to dismiss on behalf of Defendants Martin or Raider). Plaintiff has now filed a Motion requesting the Court serve Defendants Martin and Raider. Dkt. 43.

1 The record reflects Defendants Martin and Raider, through inadvertence, were not served.  
2 As Defendants have proceeded on the Amended Complaint, the Court finds it appropriate to  
3 serve Defendants Martin and Raider. Accordingly, Plaintiff's Motion (Dkt. 43) is GRANTED  
4 and the Court ORDERS as follows:

5 (1) Service by Clerk

6 The Clerk is directed to send the following to Defendants Maria Martin and Maria Raider  
7 by first class mail: a copy of plaintiff's amended complaint (Dkt. 30), a copy of this Order, two  
8 copies of the notice of lawsuit and request for waiver of service of summons, a waiver of service  
9 of summons, and a return envelope, postage prepaid, addressed to the Clerk's Office.

10 (2) Response Required

11 Defendant(s) shall have **thirty (30) days** within which to return the enclosed waiver of  
12 service of summons. A defendant who timely returns the signed waiver shall have **sixty (60)**  
13 **days** after the date designated on the notice of lawsuit to file and serve an answer to the  
14 complaint or a motion permitted under Rule 12 of the Federal Rules of Civil Procedure.

15 A defendant who fails to timely return the signed waiver will be personally served with a  
16 summons and complaint, and may be required to pay the full costs of such service, pursuant to  
17 Rule 4(d)(2) of the Federal Rules of Civil Procedure.

18 (3) Filing and Service by Parties, Generally

19 All attorneys admitted to practice before this Court are required to file documents  
20 electronically via the Court's CM/ECF system. Counsel are directed to the Court's website,  
21 [www.wawd.uscourts.gov](http://www.wawd.uscourts.gov), for a detailed description of the requirements for filing via CM/ECF.  
22 Plaintiff shall file all documents electronically. All filings must indicate in the upper right hand  
23 corner the name of the magistrate judge to whom the document is directed.

Any document filed with the Court must be accompanied by proof that it has been served upon all parties that have entered a notice of appearance in the underlying matter. Plaintiffs subject to the Court's E-Filing Initiative shall indicate the date the document is submitted for e-filing as the date of service.

(4) Non-State Defendants

As a registered user of the Court's electronic filing system, you must accept electronic service of all court filings (**except** original service of a complaint) by prisoner litigants housed at facilities actively engaged in the Prisoner E-Filing Initiative. Prisoner litigants incarcerated at facilities actively engaged in the Prisoner E-Filing Initiative are no longer required to serve their court filings on the Court or defendants by mail. Service by mail of your court filings to prison litigants housed in facilities actively engaged in the Prisoner E-Filing Initiative is also no longer required.

(5) Motions, Generally

Any request for court action shall be set forth in a motion, properly filed and served. Pursuant to LCR 7(b), any argument being offered in support of a motion shall be submitted as a part of the motion itself and not in a separate document. The motion shall include in its caption (immediately below the title of the motion) a designation of the date the motion is to be noted for consideration upon the Court's motion calendar.

Stipulated and agreed motions, motions to file over-length motions or briefs, motions for reconsideration, joint submissions pursuant to the option procedure established in LCR 37(a)(2), motions for default, requests for the clerk to enter default judgment, and motions for the court to enter default judgment where the opposing party has not appeared shall be noted for consideration on the day they are filed. *See* LCR 7(d)(1). All other non-dispositive motions

1 shall be noted for consideration no earlier than the third Friday following filing and service of the  
 2 motion. *See* LCR 7(d)(3). All dispositive motions shall be noted for consideration no earlier  
 3 than the fourth Friday following filing and service of the motion. *Id.*

4 For electronic filers, all briefs and affidavits in opposition to either a dispositive or non-  
 5 dispositive motion shall be filed and served not later than 11:59 p.m. on the Monday  
 6 immediately preceding the date designated for consideration of the motion.

7 The party making the motion may file and serve, not later than 11:59 p.m. on the date  
 8 designated for consideration of the motion, a reply to the opposing party's briefs and affidavits.

9 (6) Motions to Dismiss and Motions for Summary Judgment

10 Parties filing motions to dismiss pursuant to Rule 12 of the Federal Rules of Civil  
 11 Procedure and motions for summary judgment pursuant to Rule 56 of the Federal Rules of Civil  
 12 Procedure should acquaint themselves with those rules. As noted above, these motions shall be  
 13 noted for consideration no earlier than the fourth Friday following filing and service of the  
 14 motion.

15 Defendants filing motions to dismiss or motions for summary judge are advised that they  
 16 MUST serve *Rand* and *Wyatt* notices concurrently with motions to dismiss and motions for  
 17 summary judgment so that *pro se* prisoner plaintiffs will have fair, timely and adequate notice of  
 18 what is required of them in order to oppose those motions. *Woods v. Carey*, 684 F.3d 934, 941  
 19 (9th Cir. 2012). The Ninth Circuit has set forth model language for such notices:

20 A motion for summary judgment under Rule 56 of the Federal Rules of Civil  
 21 Procedure will, if granted, end your case.

22 Rule 56 tells you what you must do in order to oppose a motion for summary  
 23 judgment. Generally, summary judgment must be granted when there is no genuine  
 24 issue of material fact – that is, if there is no real dispute about any fact that would  
 affect the result of your case, the party who asked for summary judgment is entitled  
 to judgment as a matter of law, which will end your case. When a party you are

1 suing makes a motion for summary judgment that is properly supported by  
 2 declarations (or other sworn testimony), you cannot simply rely on what your  
 3 complaint says. Instead, **you must set out specific facts in declarations,**  
 4 **depositions, answers to interrogatories, or authenticated documents, as**  
 5 **provided in Rule 56(e), that contradict the facts shown in the defendant's**  
 6 **declarations and documents and show that there is a genuine issue of material**  
 7 **fact for trial. If you do not submit your own evidence in opposition, summary**  
 8 **judgment, if appropriate, may be entered against you. If summary judgment**  
 9 **is granted, your case will be dismissed and there will be no trial.**

6 *Rand v. Rowland*, 154 F.3d 952, 963 (9th Cir. 1998) (emphasis added); see *Wyatt v. Terhune*,  
 7 315 F.3d 1108, 1120 n.14 (9th Cir. 2003) (extending the fair notice requirement to motions to  
 8 dismiss for failure to exhaust administrative remedies).

9 Defendants who fail to file and serve the required *Rand* and *Wyatt* notices on plaintiff  
 10 may have their motion stricken from the Court's calendar with leave to re-file.

11 (7) Direct Communications with District Judge or Magistrate Judge

12 No direct communication is to take place with the District Judge or Magistrate Judge with  
 13 regard to this case. All relevant information and papers are to be directed to the Clerk.

14 (8) The Clerk is directed to send copies of this Order to plaintiff. The Clerk is further  
 15 directed send a copy of this Order and a courtesy copy of plaintiff's amended complaint (Dkt.  
 16 30) to the Pierce County Prosecutor's Office, by first-class mail.

17 Dated this 29th day of February, 2024.

18 

19 David W. Christel  
 20 Chief United States Magistrate Judge